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February 15, 2007

**Via Email & First Class Mail**

Matthew C. Ireland, Esq.  
Assistant Attorney General  
Environmental Protection Division  
Attorney General's Office  
100 Cambridge Street, 10<sup>th</sup> Floor  
Boston, MA 02108

**Re: New Ventures Associates, LLC; Preliminary Injunction Amendments Response**

Dear Attorney Ireland:

I am in receipt of a letter dated February 7, 2007 outlining proposed amendments to the Preliminary Injunction. Although the document is dated February 7, 2007, it was not received by this office until after the close of business on Friday, February 9, 2007. The letter suggests that two items in the Preliminary Injunction (the "Order") should be modified prior to approval of C&D materials to be disposed of at the Landfill by New Ventures Associates, LLC ("New Ventures").

New Ventures responds as follows:

**I. Paragraph 1.d.**

**A. Permanent System.**

Paragraph 1.d. of the Order requires the installation and operation of the permanent LFG pretreatment system in accordance with the performance standards and Appendix A within 100 days of the Order. Following the grant of a short force majeure associated with the enclosed flare installation, New Ventures has been operating the permanent system in accordance with the Order. The third vessel has been brought to the site and is connected as part of the permanent system. (See attached picture)

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## **B. Above-Ground Header.**

New Ventures disagrees with the position of the Department that the above-ground header recently installed to connect the pretreatment system and enclosed flare to the Landfill gas extraction system is temporary and that it does not include condensate controls. The installation is not in violation of the Order. The pretreatment system includes condensation controls as part of the pretreatment system and contains control valves to direct the flow from the pretreatment system to the enclosed flare. On this basis, it is not necessary to amend the Order to require the submittal of a new plan for the construction of a new header this winter. New Ventures will agree, subject to approval for C&D material disposal, to change its permanent above-ground header when the ground and weather are suitable (no later than April 15, 2007) and to present the as-built plan to the Department. The pipes necessary for the subsurface tie in are on site. There is no need to change or modify Appendix A of the Order to include new requirements for operation of the header pending substitution of a different header system.

## **II. Construction of Basin 2 and Related Portions of the Berm.**

As you are aware, in preliminary discussions with the Attorney General's Office, the only item to be amended in the Order related to paragraph 1.w. We seek until February 26, 2007 to complete the Basin and March 15, 2007 to complete the stormwater controls. Under separate cover we have provided the Department with a force majeure request that took into account the extreme cold weather, the uncertainty related to the berm and the disposition of the material blasted from the drainage basin area. Notwithstanding the extreme cold, New Ventures' blaster has conducted work increasing the capacity of Basin 2. The Basin has been completed and New Ventures is in compliance with 1(w) at this time. (See attached picture) Stormwater controls will be installed including erosion control measures. New Ventures proposes the stabilization of the western portion of the berm with stone that will reduce concentrated volume and velocity and prevent channeling of flow toward the berm. While stormwater runoff from the Landfill at the northern portion of the berm is directed toward Basin 2, New Ventures will place hay bales or rip rap at the toe of the slope to reduce the potential for berm erosion. This work will be performed prior to March 15, 2007 and will be outlined in SITEC's weekly report. Erosion controls will be installed to mitigate impacts to the extent necessary before the spring rains occur and the permanent swale is constructed.

## **III. C&D Material.**

As the Department and the Attorney General are well aware, the decision to accelerate the closure of the Landfill required the expenditure of considerable capital for payments of Geo-Composite, FML, piping, stormwater requirements, and heightened presence and monitoring. In addition, New Venture's primary FML contractor left the job for another client just prior to

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Christmas 2006 leaving New Ventures and the City of Newburyport in a dire predicament. New Ventures was able to secure the services of another contractor and has worked diligently through the winter with its own personnel including the extraordinary cold snap in late January and early February 2007. During the closing, New Ventures added a substantial area to the Phase I closure area. New Ventures' work has resulted in more than One Million (\$1,000,000.00) Dollars in expenses in addition to the Two Hundred Thousand (\$200,000.00) Dollars in the escrow fund. Ethan has directed his personnel through very difficult weather. Throughout this time, odor complaints have dwindled to less than a handful over the past two months.

With the completion of the Basin, New Ventures is in compliance with the Order and therefore is entitled to resume bringing 24 to 35 trucks with C&D material to Phase IA per day in accordance with the Order. Adjustments have been made to keep the flare's temperature above 1400° and Cornerstone has confirmed that the present cfm and system operation is consistent with its design. To the extent that the Department continues to prohibit New Ventures from bringing materials to the Landfill, New Ventures will be not be able to complete the closure within the time periods in the Order. New Ventures set an aggressive schedule when it negotiated the Order so that it could complete the closure during this calendar year in order to bring quicker relief to the City of Newburyport and the Department. The closure has accomplished that goal. The Department's actions reduce the likelihood that the Landfill can be closed within these timeframes. New Ventures is being harmed financially and cannot sit by on a daily basis while costs mount without being able to bring C&D materials to the Landfill.

New Ventures requests the resumption of the C&D disposal on Monday, February 19, 2007. The amendment of the Order is not necessary to resume the disposal.

We look forward to your immediate response.

Thank you.

Sincerely,

Richard A. Nylén, Jr.

RAN/kad  
Enclosure

cc: Mr. William Thibeault  
Mr. John Carrigan

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Michael W. Dingle, Esq./DEP-NERO

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